

---

## Taking Care Of Business: A Strata Council's Guide to Governing Short-Term Vacation Rentals

**Publication / Date:** The CHOA Journal-Spring 2018

Written by: Lisa N. Mackie / Alexander Holburn Beaudin + Lang LLP

*California Dreaming* is a 120-unit residential strata corporation in Vancouver, British Columbia. Like many strata corporations, *California Dreaming* is grappling with increasing reports of owners using their strata lots for short-term vacation rentals. The Strata Council has also started receiving complaints from owners who are concerned with compromised building security, insurance coverage, and diminished enjoyment of their homes as a result of these temporary lodgings. The Council wondered: are there any laws that restrict short-term rental operations, and is there any way to avoid a *Hotel California*?

### THE LAWS OF THE LAND

Living in a strata corporation means living under certain laws of the land. The *Strata Property Act*, S.B.C. 1998, c. 43 ("*Strata Property Act*") is the principal legislation that governs the creation and operation of strata corporations in our province. This legislation operates in conjunction with a strata corporation's bylaws and rules, as well as several other provincial and municipal laws that regulate how persons can use and enjoy their strata properties.

By default, strata corporations are given the "Schedule of Standard Bylaws" appended to the *Strata Property Act*. A community is free to amend those bylaws as they see fit, provided that the amendments do not conflict with the *Strata Property Act* or other laws. When it comes to operating a short-term rental business from a strata lot, the most applicable standard bylaw is Bylaw 3, which reads as follows:

### Use of property

- 3 (1) An owner, tenant, occupant or visitor must not use a strata lot, the common property or common assets in a way that
- (a) causes a nuisance or hazard to another person,
  - (b) causes unreasonable noise,
  - (c) unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets or another strata lot,
  - (d) is illegal, or
  - (e) is contrary to a purpose for which the strata lot or common property is intended as shown expressly or by necessary implication on or by the strata plan.
- (2) An owner, tenant, occupant or visitor must not cause damage, other than reasonable wear and tear, to the common property, common assets or those parts of a strata lot which the strata corporation must repair and maintain under these

bylaws or insure under section 149 of the Act.

(3) An owner, tenant, occupant or visitor must ensure that all animals are leashed or otherwise secured when on the common property or on land that is a common asset.

(4) An owner, tenant or occupant must not keep any pets on a strata lot other than one or more of the following:

- (a) a reasonable number of fish or other small aquarium animals;
- (b) a reasonable number of small caged mammals;
- (c) up to 2 caged birds;
- (d) one dog or one cat.

Although a short-term rental operation will likely not breach the “reasonable number of fish” provision, it can certainly run over other property use restrictions. Among the most common complaints arising from short-term vacation rentals pertain to the following:

- A heightened security risk arising from the rotation of strangers residing at the strata property;
- Increased damage and repair and maintenance expenses arising from unruly lodgers;
- Improper or unauthorized use of recreational facilities and common amenities;
- Safety and security breaches caused by the distribution and loss of building keys and FOBS;
- Increased noise, foot traffic, and other disruptions; and
- Inadequate or compromised insurance coverage due to a material change in the risk associated with the strata lot (i.e. changing the strata lot from a residential to non-residential / business use).

It is also open to Council to argue that a short-term vacation rental business constitutes an “illegal activity” within the meaning of Bylaw 3 if the operation breaches city requirements. Whether or not that bylaw enforcement option is available will vary from city to city.

### **WE BUILT THIS CITY ON...**

The proliferation of short-term vacation rentals in British Columbia has prompted many municipalities to build new bylaw regimes to prohibit or regulate these activities. At the time of writing, the municipal landscape governing short-term vacation rentals is as varied as strata corporations themselves.

Short-term vacation rentals are currently prohibited in Vancouver unless the rental qualifies as a hotel or bed-and-breakfast that meets zoning and licensing requirements. Since September 2017, the City of Victoria has also been prohibiting short term rental operations throughout the downtown area while offering some “grandfathering” exemptions for existing operations. Despite such restrictions, it is estimated that there over 6,000 short-term vacation rentals in the Vancouver area alone. Perhaps because of its popularity and challenges with bylaw enforcement, municipalities (including Victoria and Vancouver) have now adjusted course with respect to their vacation rental prohibitions and have opened the door for more relaxed restrictions found in other municipalities.

On November 14, 2017, the Vancouver City Council approved new regulations which are due to come into force beginning April 2018. These new provisions eliminate the blanket prohibition on short-term vacation rentals and authorize the business operations subject to several conditions which are in line with other municipalities’ take on this trend. For example, like Richmond, Coquitlam, and North Vancouver, Vancouver will soon require short-term vacation rentals to be operated from the “principal residence” of the owner/host (i.e. not a secondary suite). In addition, like Whistler, Penticton, and Nelson, Vancouver will also require the owner/host to obtain a business license to be renewed annually. Although Surrey, Delta, Burnaby, and West Vancouver have yet to weigh in on such regulations, it is expected that Victoria will follow suit with its own licensing regime in the near future.

Given the multitude of positions adopted by municipalities, Councils confronted with a complaint of a short-term vacation rental should consult their own municipal bylaws to confirm whether the activities are, by the city's own definition, "illegal". If the activities are prohibited by the municipality or are otherwise in breach of municipal licensing requirements, then Council may deploy standard Bylaw 3(1)(d) to confront the issue. Notably, some municipalities also require strata corporation approval as a condition for obtaining a license for short-term vacation rentals. Accordingly, if a strata corporation passes a bylaw specifically banning the activity, then the owner/host may be out of luck with acquiring the city's approval.

### **NOT IN MY BACKYARD**

The decision to permit, restrict or prohibit short-term rental accommodations is a decision for each strata corporation. Although the Standard Bylaws afford some tools for Councils to regulate the most common side-effects of these hoteling operations (e.g. security breaches; nuisance; disruptive activities; etc.), the most prudent course of action is to adopt specific bylaws governing the matter.

The BC Civil Resolution Tribunal ("CRT") has already upheld one strata corporation's attempts to enforce bylaws prohibiting short-term vacation rentals. In *The Owners, Strata Plan VR812 v. Yu*, 2017 BCCRT 82, the CRT was tasked with deciding a dispute regarding an "uncontested" Airbnb operation from a strata lot. In addition to citing infractions of the standard property use bylaws, the Strata Corporation relied upon its own bylaw which expressly prohibited using a strata lot for "short-term accommodation purposes" such as a bed-and-breakfast, lodging house, hotel, home exchange, time-share or vacation rental. On review of the parties' evidence, the CRT noted that the owner rented out as many as 15 beds and up to 20 short-term boarders at any one time at the property, invariably causing disruption in the strata community. The operation similarly attracted the attention of the City of North Vancouver who prohibited the activities for operating without a business license and breaching certain zoning requirements. In the end, the CRT upheld much of the strata corporation's bylaw enforcement and its short-term vacation rental bylaw, ultimately ordering the owner to cease her Airbnb operations and pay the

strata corporation \$4,600 in related fines and the CRT's filing fees.

### **PROCEED WITH CAUTION**

Just with any bylaw infraction, investigating a reported breach of a short-term vacation rental bylaw takes time and demands a certain standard of care. Section 31 of the *Strata Property Act* requires Council members to (a) act honestly and in good faith with a view to the best interests of the strata corporation, and (b) exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances. Any Council member with a stake in the game (i.e. those who reported the bylaw infraction, or those who were reported on) must declare their interest and abstain from the Council's bylaw enforcement investigation, deliberation and ultimate decision. A conflicted Council member's failure to abstain from the bylaw enforcement process not only compromises the Council's deliberations, but also risks the enforceability of its decision to enforce a short-term vacation rental bylaw.

### **JUST THE FACTS, MA'AM**

When processing a complaint of an unauthorized short-term vacation rental, the Council should collect and consider as much information as possible (e.g. eye-witness evidence; statements from temporary lodgers; rental advertisements; photographs; etc.). The Council must also give written notice of the alleged infraction to the owner and/or tenant (as applicable), full written particulars of the complaint, and an opportunity to respond in writing and/or at a Council hearing. Unfortunately, the *Strata Property Act* offers Councils very little guidance on what content to include in these notices. Ideally, the notice should describe the specific alleged bylaw infraction, the details of the alleged violation (i.e. the what, the when, and the where of the short-term rental operation) and the opportunity to dispute the complaint. To keep the bylaw enforcement process moving, it is beneficial to impose a response deadline for the owner and/or tenant to respond to the complaint.

### **CAN YOU HEAR ME NOW?**

If the owner/tenant requests a Council hearing to dispute a vacation rental allegation, Council should hold the hearing at the next scheduled Council Meeting or minimally within four weeks of the request. Council should also afford the owner and/or tenant sufficient time to make their case and answer any questions Council may have. Although Council should avail itself of any questions, it should take special care not to convey a decision until all of the evidence has been collected and considered. The Council is also obligated to protect the parties' privacy; as such, no observers are permitted to attend the bylaw enforcement hearing.

### **THE VERDICT IS IN**

Once the Council has received/heard all the evidence, it must issue a written decision "as soon as feasible" and, in any event, within one week of the hearing. Bylaw enforcement decisions are principally governed by sections 129 -138 of the *Strata Property Act*. Notably, section 129 authorizes Councils to impose a fine up to the maximum amount permitted by the Regulations (\$200 per infraction), and also affords weekly fining options for continuing contraventions so long as these maximums are echoed in the community's bylaws. The Council can also decide to issue a warning or give the purported offender time to comply with the bylaw or rule before proceeding with the enforcement process.

### **MAKING SUITABLE ACCOMMODATIONS**

Given the proliferation of short-term vacation rental businesses throughout British Columbia, Strata Council should take the time to review their community's bylaws and survey owners to assess whether it plans to embrace or oppose the trend. While governing short-term vacation rentals is hardly a holiday, there is no "time off" when it comes to bylaw enforcement.